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Situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the periodic report submitted by Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia, in accordance with General Assembly resolution 52/147 of 12 December 1997 and Economic and Social Council decision 1998/272. Pursuant to the requests of the Commission of Human Rights and the Council, the report will also be made available to the members of the Security Council and the Organization for Security and Cooperation in Europe.

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Annex

Report on the situation of human rights in Bosnia and Herzegovina prepared by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, in accordance with General Assembly resolution 52/147 of 12 December 1997 and Economic and Social Council decision 1998/272 of 30 July 1998

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I. Introduction

1. This is the first comprehensive report on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Jiri Dienstbier. The report considers human rights developments in the three countries of the Special Rapporteur's mandate until mid-August 1998. Because United Nations practice requires early submission of reports for editing and translation purposes, information contained in the present report may be superseded by more recent events that have taken place prior to its presentation to the General Assembly in November 1998. The Special Rapporteur will endeavour to provide updates on the human rights situation in the coming months.

2. Mr. Dienstbier was appointed on 13 March 1998 by the Chairman of the Commission on Human Rights, and fully assumed his duties in early July 1998. By August 1998, he had visited all of the countries of his mandate. In April 1998, at the request of the Chairman of the Commission on Human Rights, he travelled on a brief mission to the Federal Republic of Yugoslavia, especially for the purpose of reviewing the situation in Kosovo. He submitted a report on his mission with a letter to the Chairman dated 8 April 1998 (E/CN.4/1998/164). The Special Rapporteur visited Bosnia and Herzegovina from 4 to 9 July 1998, and Croatia from 9 to 15 July 1998. He was planning return missions to the Federal Republic of Yugoslavia in September 1998, and to post-election Bosnia and Herzegovina and to Croatia in October 1998.

3. The Special Rapporteur would like to pay tribute to his predecessors, Mr. Tadeusz Mazowiecki and Mrs. Elisabeth Rehn, for their commitment and their open-minded presentation of the situation of human rights in the region of the former Yugoslavia. Mr. Dienstbier hopes similarly to spend considerable time in the territory and to seek out a variety of viewpoints to ensure the accuracy and value of his reports. The Special Rapporteur would also like to express his gratitude to the Geneva office of the United Nations Office of the High Commissioner for Human Rights (OHCHR), especially to the field officers, who work and live under difficult circumstances. All of the Special Rapporteur's missions are organized by OHCHR field offices, which also gather information and otherwise support his mandate.

II. General observations

4. By definition, it is the role of the Special Rapporteur to be critical. Human rights are never fully respected anywhere. Their observance requires the permanent attention of national and international governmental institutions, media, non-governmental organizations and the people themselves. This is especially so in the global neighbourhood, where no problem is local anymore. Criticisms, however, should not be taken by Governments as an inconvenience but rather as a source of support on the road to democracy. Having come himself from a formerly communist State, the Special Rapporteur is aware of the difficulties in transition to democracy and an open society. Many of the problems faced by countries in these circumstances are similar, even if there are also important differences due to the legacy of past conflicts, recent wars and other factors.

5. Serious human rights violations can still be observed in all three countries of the Special Rapporteur's mandate. Many of these continuing problems are linked to a failure to respect the human rights most closely associated with democratic principles. The challenge for political leaders at all levels in the countries of the Special Rapporteur's mandate will be to instill in their States and their communities a new appreciation of the meaning of democracy, by encouraging free expression, respect for the law, especially in law enforcement and in the courts, and above all the understanding that government's main purpose is not to control society but to serve the freely expressed will of the people.

III. Bosnia and Herzegovina

A. General observations

6. Almost three years after the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement), the citizens of Bosnia and Herzegovina remain subjected to serious human rights violations. Sources of violations are different and methods vary from place to place, but one pattern predominates: victims usually belong to ethnic groups which are or have become a minority in a given area. Occasionally ethnic factors are replaced by political ones. The assurances of political leaders about their commitment to implement the human rights provisions of the Dayton Agreement have not yet been translated into active policy. Numerous cases indicate the direct responsibility of state institutions for human rights violations

in some instances, while in others there is a serious failure by the authorities to investigate or redress abuses reported to them.

7. The Constitution of Bosnia and Herzegovina places important responsibility for the protection of human rights with the authorities of both entities – the Federation of Bosnia and Herzegovina (Federation) and the *Republika Srpska* (RS) – but the proper functioning of state authorities is also of the utmost importance. So far, progress in establishing these authorities has been minimal. Meanwhile, in spite of some advances, serious problems remain unresolved in the Federation, including on such matters as the police, the judiciary and education. Some Bosnian Croat leaders, in particular, continue to oppose all efforts aimed at creating a more efficient system of federal rules and regulations. In the RS, extreme ideologies of ethnic separation and supremacy are giving way to more pragmatic policies, based largely on the desire to obtain desperately needed economic assistance through cooperation with the international community. However, human rights continue to be violated on a major scale, with the courts, police and other public institutions exercising discrimination in a variety of ways.

B. Return of refugees and displaced persons

8. 1998 had been proclaimed the year of minority returns, but the reality is that very few such returns have taken place. Many refugees returning from abroad cannot return to their homes of origin, adding to the number of internally displaced persons in Bosnia and Herzegovina, which approaches some 800,000. The main obstacles to return remain poor security, lack of adequate housing, few employment opportunities and, for families with children, problems in education.

9. Several incidents of violence against returnees caused major setbacks during the spring and summer of 1998. In Drvar (Federation, Bosnian Croat-controlled), the killing of a Bosnian Serb returnee couple and a riot directed against international representatives in April 1998 seriously slowed the rate of return of Serbs to the area. Many homes belonging to Serbs have been burnt in Drvar since 1997. In recent months, some Serbs who fled in April 1998 have returned, but security concerns remain. During his mission to Bosnia and Herzegovina in July 1998, the Special Rapporteur visited Drvar and met with the new chief of police, who committed himself to do his utmost to improve the security situation in the town. By August 1998, however, no arrests or other concrete progress had been reported.

10. Other areas where returns of minorities have been particularly contentious in the Federation include the Mostar area and Middle Bosnia Canton. In Stolac (Bosnian Croat-controlled), large-scale destruction of returnees' property, incidents of harassment and attacks on returnees have continued, with local police either unable or unwilling to protect returnees or arrest wrongdoers. Similarly, although Croats have started to return to Bugojno (Bosniak-controlled), returns on a large scale will not take place if municipal housing authorities continue to disregard returnees' property rights.

11. There have been almost no minority returns to the eastern part of the RS, including for example to Foca, Srebrenica, Zvornik and Visegrad. Yet there appears to be a willingness on the part of some to return. Thousands of Bosniak minorities have made assessment visits to their pre-war homes in the eastern RS. In other parts of the RS, there have been instances of low-profile, spontaneous minority returns. The rate of return, however, is still well below the expectations of the international community, with authorities continuing to impose significant obstacles.

12. Major conferences to discuss the question of returns were organized in February 1998 at Sarajevo and April 1998 at Banja Luka to help encourage minority returns to both cities as a positive example. At Sarajevo, although a declaration was adopted setting a target of 20,000 minority returns, very little had been achieved by August 1998. Meanwhile there has been virtually no progress in returns to Banja Luka.

13. Most minority returns so far have been spontaneous, arranged by displaced persons themselves through local non-governmental organizations. The Coalition for Return (whose representatives the Special Rapporteur met in July 1998) has organized assessment visits, collected and disseminated information, and advocated strongly for returns, thus creating some small progress. The Special Rapporteur believes this is a good way to achieve sustainable returns, and hopes that these associations receive support for their work.

C. Property rights and legislation

14. In Bosnia and Herzegovina, the problem of the regulation of property, including socially owned apartments, is a source of continuing concern and has direct consequences for the return process. In the Federation, after immense pressure from the international community led by the Office of the High Representative (OHR), a property law package was adopted that came into force on 4 April 1998.

Under the Apartments Law, relating only to socially owned property, new claims for repossession of apartments in the Federation had to be lodged with housing authorities in the municipality where the apartment was located no later than 4 October 1998. If pre-war occupants failed to file such claims in time, they could permanently lose occupancy rights. The authorities had to submit decisions on claims within 30 days.

15. A number of obstacles have arisen, however, with respect to the new property laws. After interventions by OHR, instructions for their implementation were issued by the Federation Minister of Urban Planning and Environment, and some points were clarified (e.g., that fees were not to be charged to file claims, and that military and police apartments were included within the competence of municipal authorities). However, many obstacles remained, and the picture so far of the repossession process under the laws in the Federation is discouraging. As of August 1998, few claims had been decided despite the fact that thousands of decisions were due. The situation has affected returns, particularly to more urban areas, where most socially-owned property is located, such as Sarajevo, Mostar and municipalities in Middle Bosnia Canton, including Bugojno and Novi Travnik.

16. In the Republika Srpska, housing and property draft laws prepared for consideration by the RS National Assembly at a session on 26 June 1998 were not passed but were instead returned to the Government for redrafting. The deadline for passing the laws as set by the Peace Implementation Conference at Luxembourg was 31 August 1998, but there appeared little probability that the new laws would be adopted before elections in September 1998.

17. The RS Law on Abandoned Property, adopted during the war, continues to be used to deny property rights to Bosniaks and Croats forcibly evicted from their homes in 1995. Particularly critical is the situation of those who never left the town, known as "floaters". In their cases, the courts have been slow to process their claims, and in most instances when a court order is issued for reinstatement of the floater in his or her property, evictions of the illegal occupants are not carried out due to lack of cooperation from local police and other law enforcement officials. Some floaters were reinstated in early 1998, but in May 1998 eviction procedures in Banja Luka were stopped following a resolution of the RS National Assembly. Evictions were soon formally resumed after interventions by OHR and the Office of the United Nations High Commissioner for Refugees (UNHCR), but no successful reinstatement of minorities had been achieved through the courts as of August 1998.

18. In the RS, local housing commissions which manage the housing stock appear to discriminate in the allocation of property. There are no firm responses, for example, to cases of double occupancy by refugees, or illegal occupancy by members of the military or police of homes belonging to minorities. In Bosanska Gradiska, housing authorities openly declared that they would not consider cases of Bosniaks until all Serb refugees and displaced persons had their housing situations resolved. Although the United Nations Mission in Bosnia and Herzegovina (UNMIBH) has the authority to issue non-compliance reports against police officers, which can lead to their decertification and removal, it has proven more difficult to issue non-compliance reports against civilian authorities, such as housing commissioners.

19. One positive development was the opening at Banja Luka on 16 March 1998 of an office of the Commission for Real Property Claims (CRPC), mandated by the Dayton Agreement to certify ownership of property. The decisions of CRPC are final and binding, and authorities are obligated under the Dayton Agreement to implement the decisions. However, no enforcement mechanism exists, and draft implementing legislation has not yet been finalized for presentation to the authorities.

D. Other forms of discrimination

20. Patterns of discrimination have been widely reported in the area of acquisition of identification documents. For applications from minorities in the RS, for example, authorities often demand additional documentation (such as certification that the applicant never left the territory of the RS during the war, or that military obligations were fulfilled). In other cases, illegal fees are charged. Although specific cases of discrimination are often resolved after the intervention of international agencies, problems continue to be reported from throughout the region. Discrimination is also rife in employment and in the granting of medical or other social services.

21. In the RS, minority populations have encountered serious difficulties in exercising freedom of religion. The Bosniak community has repeatedly sought permission to rebuild the Ferhadija Mosque in Banja Luka (all mosques in the RS were destroyed during the war), but the authorities have so far not cooperated. After the death of the Mufti of Banja Luka on 23 July 1998, Banja Luka authorities turned down a request from the Bosniak community to bury him at the site of the destroyed mosque. A violent crowd of about 300 persons, led by members of the "Serb Party of Krajina and Posavina", threw stones at the building of the Islamic

community and threatened its members. Equally, Croats of Catholic faith have been victimized in some instances. On 23 April 1998 at Drventa, Bosnian Serbs prevented Cardinal Vinko Puljic from conducting a mass to mark St. George's Day in a destroyed Catholic church.

E. Police reform

22. The establishment of multi-ethnic police, which is among the main tasks of UNMIBH, continues to be resisted in both entities. The formation of truly multi-ethnic police forces could be a vital guarantee for returning minorities, producing an overall positive effect on security. Despite efforts by UNMIBH to restructure the RS and Federation police, little progress has been achieved. The number of female officers remains far below any acceptable standards (of 9,491 police officers employed in the Federation, only 154 are female). The authorities frequently claimed that the proximity of elections in September 1998 made it politically difficult to press ahead with implementation of United Nations recommendations.

F. Commission on Human Rights

23. The Dayton Agreement created a sophisticated and complex system of human rights protection in Bosnia and Herzegovina. The Commission on Human Rights for Bosnia and Herzegovina, created by annex 6 of the Agreement, consists of the Human Rights Chamber and the Human Rights Ombudsperson. Both of their caseloads have expanded considerably in the last year. As of 31 July 1998, the Chamber, which is a judicial body, had registered 828 cases, issued 25 provisional measures, published one report on amicable settlement, and issued 17 final and binding decisions on the merits involving 33 cases. The decisions required respondent Parties to take specific actions in cases with such human rights issues as the death penalty, right to property, standards of arrest and detention, and enforcement of judicial decisions.

24. The Office of the Human Rights Ombudsperson is a mediation-oriented institution that has the power to conduct investigations and issue recommendations. As of 31 July 1998, the Ombudsperson had registered 2,480 cases, published 35 final reports dealing with 154 individual cases and issued 13 special reports on more general human rights issues. Seventy-three cases were referred to the Chamber.

25. The Dayton Agreement obligates the Parties to cooperate fully with the annex 6 institutions and to comply with their decisions and recommendations. In the event of non-compliance, the Office of the High Representative can use its influence to pressure the authorities to comply. However, no explicit enforcement mechanisms exist. Although there have been a few successful outcomes, a serious lack of cooperation by authorities continues to frustrate the implementation of most decisions and recommendations. Authorities in the RS have made the most effort to cooperate, implementing three of the 17 final decisions of the Chamber and responding to almost half the requests from the Ombudsperson for information in cases in which the RS was a respondent Party. Although the RS still needs to improve its record, cooperation from state and Federation authorities is worse, with many authorities simply ignoring requests for information, or even attempting to obstruct decisions' implementation.

G. Federation Ombudsmen

26. The institution of the Federation Ombudsmen, established by the Washington Agreements in 1994, is composed of three Ombudsmen (one Bosniak, one Bosnian Croat and one Bosnian Serb), and is competent to conduct investigations into human rights violations in the territory of the Federation. The institution has nine branch offices located throughout Federation territory. As of April 1998, the Ombudsmen had 7,300 pending cases, of which 2,250 were lodged in the first four months of 1998 alone. As some 45,000 individuals have contacted the Ombudsmen since their establishment, it is clear that the institution has become well known. However, the rate of compliance is still low, with authorities implementing recommendations in only about 30 per cent of the cases. The Special Rapporteur, who met with the Ombudsmen during his first visit, wishes to continue the cooperation that his predecessors had started, and strongly supports the Ombudsmen's work.

H. The judiciary

1. Inter-entity judicial cooperation

27. On 20 May 1998, the Ministers of Justice of the Federation of Bosnia and Herzegovina and the *Republika Srpska* signed a memorandum of understanding on the regulation of legal assistance between institutions of the Federation of Bosnia and Herzegovina and the *Republika Srpska*. The long-awaited agreement addresses some of the most urgent problems concerning the functioning of the judiciaries in both entities, such as the service of subpoenas

across inter-entity boundary lines, immunity for witnesses testifying in courts of the other entity, and the admissibility of members of each bar to practise before courts throughout Bosnia and Herzegovina without restriction. The Commission on Inter-Entity Legal Cooperation, which held its inaugural session on 4 June 1998, has as its main objective to identify further areas requiring legal cooperation across inter-entity lines and make appropriate recommendations.

2. Restructuring of the judiciary

28. On 31 July 1998, the High Representative imposed a Law on Courts on Herzegovina-Neretva Canton. This exercise of power was a reaction to the failure by Cantonal authorities to agree on a law to replace the previously controlling legal regimes of the so-called "Croat Republic of Herceg-Bosna" and the Republic of Bosnia and Herzegovina. Herzegovina-Neretva Canton was the only Canton not to have restructured its judiciary in line with the new system of the Federation. According to the new law, there will be one common court for the canton at Mostar, and the ethnic composition of judges in the Canton shall reflect the results of the 1991 census.

29. Following controversy over the process of appointment of judges in the Central Bosnia Canton in early April 1998, international representatives pressed for the Canton's judicial selection process to be repeated. The process of selecting and nominating judges has been flawed by a lack of transparency into the criteria used for appointments. Following an agreement among relevant cantonal authorities, Central Bosnia became the first Canton in which a Judicial Appointments Commission was established to review all applications and ensure an impartial and just selection process.

I. Education

30. The Special Rapporteur stresses the importance of the interrelation of civil and political rights with economic, social and cultural rights in Bosnia and Herzegovina. Non-discriminatory education, for example, will be crucial to support the sustainable return of refugees and displaced persons, as well as for tolerance and reconciliation generally. Education in Bosnia and Herzegovina now operates almost exclusively along ethnic lines, serving not as an instrument of reconciliation but a signal to younger generations for continuing intolerance and hatred.

31. In the Federation, a commission was established in late 1997 for the elaboration of a uniform curriculum, but a curriculum that satisfies all national groups has not yet been created. In the RS, a law on education is in force with a single curriculum, but the question of treatment of minority issues has still not been resolved. However, authorities have expressed the wish to improve and modernize the system.

J. Missing persons

32. The extent of the problem of missing persons in Bosnia and Herzegovina is huge: the International Committee of the Red Cross (ICRC) has received requests from families concerning a total of 19,786 missing persons. The ongoing lack of information on the fate of the thousands who disappeared in the course of the conflict continues to cause great suffering to their relatives, and their need to know the fate of their loved ones requires an adequate response from the authorities and the international community.

33. It is generally acknowledged that an overwhelming majority of the missing have died. Allegations of hidden detentions, which have been systematically checked by ICRC and the United Nations International Police Task Force (IPTF), have in nearly all cases proven to be unfounded. Hence, the process of exhumation and identification will be the only way of resolving the cases of the missing. Exhumations, coordinated by OHR and carried out by local commissions (Bosniak, Serb and Croat) are after two years of political difficulties finally being conducted without major problems, including across inter-entity lines. As of 12 August 1998, the total number of bodies exhumed was 663, the majority of which had been identified.

K. Conclusions and recommendations

34. The Special Rapporteur is obliged to conclude that the representatives of the dominant political parties among the three ethnic groups in Bosnia and Herzegovina are more interested in strengthening a sense of collective identity among those who share their ethnic background than in establishing a genuine system of civic society. These policies undermine all efforts aimed at building a framework for the protection of individual rights and freedoms.

35. The return process continues to be obstructed in many ways. Authorities usually allege that minority returns to areas under their jurisdiction are impossible because there is no reciprocity in other regions. Authorities also allege that returns cannot happen until "conditions" are right, although

they rarely spell out what these conditions might be. However, neither reciprocity nor vague conditions can be accepted as basis to deny well recognized human rights, and the authorities are responsible for creating and improving conditions for return, as they committed themselves to do by the Dayton Agreement. Improvements in security will be conducive for returns, and thus the action of the international Stabilization Force (SFOR) in the short term and IPTF in the long term (for the creation of multi-ethnic police forces) will be critical.

36. Law enforcement institutions have not yet reached an acceptable level of professionalism. Further efforts to change this situation are necessary, and in that context the qualifications of IPTF monitors should be examined more closely to ensure the best possible use of the IPTF mandate. Gender issues in all IPTF activities, in particular in the restructuring and training of the national police, must receive more careful attention. The human rights training for IPTF monitors being conducted by OHCHR, together with UNMIBH, has been useful and should be expanded to reach all UNMIBH/IPTF personnel.

37. The apprehension, prosecution and punishment of war criminals remains a precondition for improvement of the human rights situation, the return of refugees and displaced persons to their pre-war homes, and reconciliation.

38. Greater respect for the mandate of the human rights institutions and their role in establishing the rule of law in Bosnia and Herzegovina is required from the authorities. The decisions and recommendations of these institutions should be implemented in full by the authorities. At the same time, a comprehensive process of reform of the judicial and legal systems is badly needed.

39. The excellent work of the Federation Ombudsmen deserves the full support of local authorities and the international community. There still remains an urgent need for the RS authorities to adopt a law on the establishment of an ombudsman institution in the RS.

40. On the question of education, rather than a single curriculum espousing only one set of views, it is necessary instead to have curricula that present different opinions so as to plant in children's minds democratic ways of thinking and tolerant habits.

41. Although there has been some improvement in creating conditions for free and democratic elections, serious problems remain to be solved. Full freedom of movement has still not been secured despite positive developments. such as the introduction of uniform license plates for the entire country. The main media still are controlled by nationalist parties, which has a negative effect on the political process. The promotion of democratic values and a true human rights culture should be pursued at all levels of society. For this reason, the continued support of the international community for local non-governmental organizations will be vital.

42. There is a necessity to build on existing frameworks within the United Nations system in order to develop a concerted effort to address gender issues. Several trends demand attention and appropriate responses, including organized prostitution, trafficking and domestic violence.

43. The families of missing persons should be given stronger support. Their social, economic and psychological needs must all be addressed.

44. The return of refugees from abroad should only occur when conditions exist for them to return in safety to their homes of origin.

IV. Republic of Croatia

A. General observations

45. The Special Rapporteur conducted his first mission to Croatia from 9 to 15 July 1998. He began in the Danube region, where he met with international and local representatives, and continued on to Western Slavonia, where he spoke with people who had recently returned from the Danube region to the villages of Dragovic and Kusonje. At Zagreb, the Special Rapporteur had meetings with Government ministers and officials; leaders of opposition parties; United Nations officials; the Head of Mission of the Organization for Security and Cooperation in Europe (OSCE); members of the diplomatic corps; the Archbishop of Zagreb; the Croatian Ombudsman; non-governmental organization representatives; and other leading figures. Information received during this visit has been supplemented by the Zagreb and Vukovar offices of the United Nations High Commissioner for Human Rights.

46. Membership in the Council of Europe and the goal of joining the European Union has had a positive influence on the Croatian Government and on the attitudes of many opinion leaders in the country. However, real understanding of the nature of democratic society still appears to be quite low. Due to the lack of democratic traditions, the legacy of communism, the recent conflict and animosity towards Serbs (both long-standing and as a result of the conflict), the development of respect for human rights will be a long process. What has been achieved to date is largely the result

of support for democratic forces within Croatia by the international community and its institutions. Many in Croatia have the ambition that it will become a truly democratic country and part of the European mainstream. Given the circumstances, it can make progress in this direction only if the presence of international institutions – for monitoring and for technical, economic and educational assistance – is maintained for the foreseeable future.

B. The right to return

47. The question of return, including the conditions to which people are returning, was the main subject of the Special Rapporteur's discussions with Croatian Government ministers and officials. The Government's programme for the return and accommodation of displaced persons, refugees and resettled persons, which was adopted as a resolution by the *Sabor* (Parliament) on 26 June 1998, recognized the inalienable right to return of all Croatian citizens and all categories of persons who can be regarded as refugees in accordance with the definitions of the 1951 Convention Relating to the Status of Refugees, to which the Republic of Croatia is a signatory, and other relevant United Nations documents.

48. However, as the Special Rapporteur pointed out in his meetings, the ultimate success of the programme will depend on the ability of those who wish to return to overcome bureaucratic and other obstacles. In particular, the Special Rapporteur mentioned the difficulties that Croatian Serbs have encountered in applying for documents at the Croatian Embassy at Belgrade. He appealed for the procedures to be simplified. OSCE reported on 27 July 1998 that the Croatian Office for Displaced Persons and Refugees (ODPR), UNHCR and the Serbian Commission for Refugees were cooperating in processing applications for return from people residing in the Federal Republic of Yugoslavia (FRY), with the intention to avoid long queues at the embassy.

49. The first returns under the new programme took place under the auspices of UNHCR and ODPR on 30 July 1998, when 26 Croatian Serbs returned to Croatia from the FRY. The Head of ODPR said that 42,615 Croatian Serbs had previously returned from the FRY, Bosnia and Herzegovina, and the Danube region, of whom 21,125 were originally from the Danube region. Some 9,800 Croatian Serbs still living in the FRY had applied to return to Croatia as of August 1998, of whom 776 had been cleared for return by ODPR; 242 of these had returned "spontaneously", that is, not through official mechanisms. ODPR estimated that 17,000 displaced persons had returned to the Danube region from other parts of Croatia, but this is considered by some international agencies to be in excess of the real number.

50. When speaking to Croatian Government ministers about conditions for return, the Special Rapporteur referred to accounts that he had heard from Serbs in Western Slavonia who had recently returned from the Danube region. Problems they experienced included uncleared mines and the lack of infrastructure, in particular water and electricity, but overwhelmingly, the main concern was unemployment. For this reason, the majority of those who had returned were elderly, while young people were reluctant to return to areas without any prospects for earning a living. A young Serb nurse who had returned to Kusonje told the Special Rapporteur that she was unable to get employment at a local hospital because she was a Serb; she maintained that there were vacant posts. Lack of employment has also been cited as a major impediment to the return of displaced persons, now living in other parts of Croatia, to the Danube region.

51. One problem to be solved before Croatian Serbs can return is that in many cases their houses have been allocated by the Government to Bosnian Croat refugees for whom the Government is committed to finding accommodation. Many Bosnian Croats now have Croatian citizenship and have no intention of returning to Bosnia, but some still wish to return to their homes, if this is possible. An additional problem has been created by the Government's former practice of encouraging domiciled Croats to move into houses from which Serbs had fled during the conflict. OHCHR has spoken to some of these people, who are bitter about the prospect of being evicted from property in which they had been led to believe they could remain.

C. Right to life and personal security

52. On 29 July 1998, in the village of Topolje in Osijek-Baranja county, a married couple were murdered. The husband was a Serb and the wife Hungarian: both were Croatian citizens and domiciled residents. According to police reports, a young male Croat was arrested and admitted to the killings. Previously, the couple had been subjected to a hand-grenade attack, intimidation and criminal damage to their fields, and had reported these incidents to the police.

53. Deliberate killings which are ethnically motivated are now rare, but the continued possession and use of explosive devices, hand grenades or other military weaponry is not uncommon, often resulting in injuries. Some such incidents may constitute attempted murder: others are probably intended only to intimidate, to discourage returns of Serbs to Croatia or to persuade those already there to leave. In June

1998, there were reports of bombing incidents at Okucani, Western Slavonia: two bombs were thrown into the yard of the house of a Croatian Serb returnee. The same person had been verbally and physically assaulted by Bosnian Croat refugees a week earlier. In July 1998, OSCE reported that a Croatian Serb living in the village of Vlahovic, Glina municipality, had been seriously beaten by a Bosnian Croat refugee living in the same village. In the Danube region, there are frequent reports of harassment of Serbs, people in mixed families and others who stayed in the region during the war, including accounts of violent attacks, ranging from the placing of bombs and other explosive devices to disputes in public places. Although the general security situation in the region is stable, according to the United Nations Police Support Group (UNPSG), the severity of violent ethnic incidents has increased. There have also been reports of the involvement of local police officers in such incidents and allegations that appropriate disciplinary measures have not been taken.

54. Unmarked landmines, left behind from the hostilities of 1991 to 1995, continue to cause deaths, particularly in rural areas. Nearly 11 per cent of Croatian territory is strewn with an estimated 1 million mines. By August 1998, over 20 people had been killed during the year by mines: in the last week of July 1998, a boy was killed and his father and brother badly injured in a mine explosion in the Baranja. Mines and unexploded ordnance continue to be a major impediment to a return to normalcy. In Western Slavonia, the Special Rapporteur met people who had returned to reconstructed houses around which a small area of ground had been cleared of mines. However, they were not able to cultivate the land in the vicinity because it had not been cleared.

D. Right to property

55. The Law on Temporary Takeover and Administration of Specified Property and the Law on Lease of Apartments in Liberated Areas, which had long been regarded by the international community as impediments to the return process, were rescinded by Parliament on 10 July 1998. The annulment of the laws was only the first step towards resolving the problems they had created: alternative accommodation still has to be provided for refugees and displaced persons living in houses and apartments belonging to people who have returned and wish to claim back their property. People who have lost tenancy rights to apartments will have even more difficulty in obtaining restitution. A report on the work of the Osijek housing commission, published in July 1998, stated that of 725 requests received since March 1998 for return to the Osijek area, about 350 were for return to apartments for which the applicants no longer had tenancy rights.

E. Administration of justice

56. A wholly independent judiciary is still a distant goal. It may take a long time before the necessity of this fundamental principle is fully understood by both politicians and judges. The principle is strongly promoted by international and local civil rights organizations, but courts are still too often influenced by politicians and government officials at the state and local levels.

57. At the end of May 1998, the President of the Supreme Court, Milan Vukovic, sent instructions to the country's courts that they were not to provide international organizations with information about their work. Although he defended this action as intended to protect judicial independence, international organizations interpreted it as an attempt to curtail legitimate monitoring activities. This view was supported by a former Supreme Court judge, who was quoted in the newspaper *Slobodna Dalmacija* as calling the instructions "unheard of and xenophobic", and stating that there was no basis for them in the Law on Courts.

58. In April 1998, the Constitutional Court sustained Krunislav Olujic's appeal against his dismissal as President of the Supreme Court, but at the end of July 1998 he still had not been reinstated. Mr. Olujic, noted for his independence, had been dismissed in 1997 in a highly controversial decision of the State Judicial Council. The Council, which should ensure the autonomy and independence of the judiciary, is appointed by Parliament and is widely considered to be under the influence of the Croatian Democratic Union (HDZ), the ruling party.

59. There is still much uncertainty about the application of the 1996 Law on General Amnesty. In March 1998, the Ministry of Justice gave OSCE and the Serb Joint Council of Municipalities a list of 13,575 amnesty decrees granted to people in the Danube region up to 18 March 1998. The Minister of Justice said that the Law on General Amnesty had been applied to 10,712 people who had been sentenced for offences, such as armed rebellion, committed during the war, and that charges relative to the same offences had been dropped against a further 2,862 people. The Minister said that the list was not final, and emphasized that the amnesty is not applicable to those who committed war crimes. However, although analysis of the information contained in the amnesty decrees had not been completed by the end of

July 1998, initial reactions were that they did not provide sufficient information to fulfil their apparent purpose of making the application of the amnesty law more transparent.

60. War crimes trials continue throughout Croatia, and are subject to unreasonable delays, in particular at the appeal stage. For instance, Milos Horvat was sentenced on 25 June 1997 to five years' imprisonment on charges of genocide at the conclusion of a trial that all international observers present, including OHCHR, found unfair. More than a year later, the Supreme Court of Croatia had not even begun the review of Mr. Horvat's appeal against his conviction. Other prisoners convicted of war crimes have also been awaiting decisions on their appeals for well over a year.

61. Goran Vusurovic, one of 19 Serbs known as the Sodolovci group, who had been convicted *in absentia* of war crimes, was arrested in August 1996. He was retried and sentenced to eight years' imprisonment in November 1996. In May 1997, the Supreme Court accepted his appeal against this sentence and ordered another retrial at the County Court level. His lawyer asked for the amnesty law to be applied and for the cessation of criminal proceedings: this was rejected by the County Court in July 1997 and by the Supreme Court in September 1997. Goran Vusurovic's new trial began in December 1997, but was then adjourned until June 1998. There were two further hearings in July 1998 and then the trial was adjourned until September 1998. International observers monitoring the trial have reported that the evidence produced so far to substantiate a war crimes charge has been weak. Meanwhile, other members of the Sodolovci group had asked for retrials but wished to remain at liberty while the trials took place. They received assurances from government officials that this would be possible, but the judge, in accordance with Croatian law, has insisted that retrials will only take place if the defendants are in custody, and has ordered their arrest. The interference of the legislative authorities in the judicial proceedings in this case, as in others, has led to confusion and accusations of bad faith from the Serb community.

62. In a report published on 4 August 1998, entitled "Croatia: impunity for killings after Storm", Amnesty International referred to the violations of human rights during and after the 1995 Croatian military operation known as "Storm", documented by former Special Rapporteur Mrs. Elisabeth Rehn in her report to the General Assembly of 7 November 1995 (see A/50/727). These violations have never been adequately addressed by the Croatian authorities. The Special Rapporteur referred again to these violations in her final report to the Commission on Human Rights of 14 January 1998: she cited figures given to her by the Government purporting to reflect criminal proceedings carried out in relation to military operations in the former North and South Sectors. However, Ministry of Justice officials told Amnesty International representatives in May 1998 that these statistics did not solely relate to criminal acts committed in 1995 but represented criminal cases currently before the courts in the relevant regions. The Ministry of Justice confirmed to Amnesty International that there was no way of discerning from the statistics which acts were committed in 1995 and which in subsequent years.

F. Freedom of expression

63. Although the Croatian Constitution guarantees freedom of thought and expression, including free media outlets, the Government holds a virtual monopoly on broadcast outlets and distribution networks for printed media. Croatian Radio and Television (HRT) operates three national television channels and three national radio stations. Although technically under the supervision of the Parliament, HRT is in fact directly controlled by the ruling party, HDZ. The few private radio and television stations lack sufficient resources to produce their own news programmes and rebroadcast those from HRT. According to a non-governmental organization, the majority of people in the Balkans rely on national television networks, "so whoever holds the TV also holds power".

64. Certain independent newspapers have been overwhelmed with civil and criminal lawsuits by members of the Government and those close to them. *Globus*, *Feral Tribune* and *Nacional*, three independent weeklies, have been especially heavily targeted. *Globus*, for example, has about 100 civil cases and between 15 to 20 criminal cases pending against it; *Nacional* has about 50 civil and 10 to 15 criminal suits; *Feral Tribune* has about 60 libel cases, amounting to nearly $3 million. Cases have also been filed against *Novi List* at Rijeka and *Vecernji List*. The law's provisions include the criminal prosecution of journalists or others who insult the President, Prime Minister or Supreme Court President, among others. According to the new penal code, journalists who could not be convicted on slander charges because the veracity of their reporting had been proved could nevertheless be sentenced for inflicting "emotional anguish" on those they were deemed to have criticized. This item has been used frequently by President Tudjman, his family and members of the HDZ. Litigation by those in power against newspapers appears to constitute one of the largest threats to freedom of expression in Croatia. Many journalists are now said to impose self-censorship in

their articles for fear of giving offence and bringing about lawsuits against their newspapers.

G. Freedom of assembly

65. In March 1998, a ban on public gatherings in the Danube region was instituted, to remain in force until 1 August 1998. Although the ban was regarded as a response to the activities of the Croatian Party of Rights (HSP), it is questionable whether such a restriction on peaceful gatherings and public protests is in accordance with article 21 of the International Covenant on Civil and Political Rights, to which Croatia is a State Party, even if intended to curb racist activities.

66. In April 1998, the Parliament discussed a bill on peaceful gathering and public protest. The bill's first draft banned gatherings in national parks, near hospitals, kindergartens, primary schools and certain cultural monuments, and on motorways and roads. It enabled the authorities in towns with more than 40,000 residents to decide on locations where gatherings and protests would be prohibited. According to critics of the bill, if it were passed without change, it would result in a virtual prohibition of gatherings: almost all town squares have cultural monuments, so gatherings would not be allowed in these traditional locations. The bill was expected to come before Parliament again in September 1998.

H. Missing persons

67. According to a statement made in July 1998 by Deputy Prime Minister Ivica Kostovic, since 1995 the remains of 2,750 war victims had been exhumed, of whom 2,071 had been identified. From 28 April to 3 July 1998, 938 bodies were exhumed at the Vukovar new cemetery, of which 588 were identified and 138 established to be on the list of missing persons. The State Commission for Detained and Missing Persons, which released these figures in July 1998, stated that 1,866 persons were still missing. According to a report of the European Community Monitoring Mission (ECMM) of 17 July 1998, a representative of the Association of the Families of Abducted and Missing Persons of Serb Origin said that they had informed the State Commission in a letter that 2,541 Serbs were still missing in Croatia, and had provided names and places. The International Committee of the Red Cross gives a figure of 700 Serbs still missing as a result of the 1995 Croatian military operations "Flash" and "Storm". There have been accusations from the Serb community of ethnic bias in the search for missing persons in the Danube region.

68. During a meeting at Zagreb in July 1998 of the Croatian and FRY Commissions for Missing Persons, the head of the FRY Commission was reported as having confirmed that a certain number of unidentified persons had been buried in Yugoslavia. Colonel Ivan Grujic, the head of the Croatian Commission, had informed the Special Rapporteur at their meeting that 300 missing persons from the Danube region were buried as unidentified in the FRY, although their identities were known at Belgrade. Reportedly, there is agreement between the two Commissions that exhumations of these bodies will take place for purposes of identification.

I. Religion and reconciliation

69. Acts of vandalism against religious buildings and objects have continued to occur. In April 1998, unknown persons took a skull from a tomb under a destroyed Catholic church at Vukovar, placed it on what used to be an altar, and wrote "Death to Franjo Tudjman, Vukovar is a Serb town, all Ustashas will end like this". The incident was widely reported in the media, and provoked a statement from the Deputy Minister of the Interior, which referred to "desecration of a sacral object". In July 1998, at Beli Manastir, also in the Danube region, during celebration of a Croatian football victory an explosion destroyed a large wooden Orthodox cross.

70. The Catholic Church in Croatia could play a positive role in the process of reconciliation. The recently appointed Archbishop of Zagreb, Josip Bozanic, is a firm supporter of reconcilation: he believes that the recent past should not be forgotten but confronted so as to favour the process of healing. In his view, the hatred that is presently felt could be overcome by creating economic prospects so that people concentrate on the future rather than the past. The current situation is illustrated by the Archbishop's attempt, at the request of the Bishop of Banja Luka, to persuade some Bosnian Croat refugees to return home. They said that they would like to go home but asked the question, characteristic of the attitude in most places in the former Yugoslavia: "Can you guarantee to us that all the atrocities will not be repeated in 20 years?" Nobody can do that; but the international community has accepted its responsibility, and should not give it up until progress towards democracy and civil society is irreversible.

J. Conclusions and recommendations

71. If the process of building democracy and civil society is to be guaranteed, the presence of international institutions will be necessary to help strengthen democratic forces in the Government and in the public. These forces are present but are still quite weak and in constant danger: nationalistic and authoritarian tendencies are still too strong. There should be close cooperation and coordination between the international institutions in Croatia.

72. The international community should concentrate its efforts on strengthening the legal system, in particular to ensure an independent judiciary; on training the police, to ensure a professional police force; and – perhaps most important for gradually creating understanding of civic and pluralistic society – on supporting the development of free media.

73. International assistance is needed to restore the economy, but to be effective it should be coordinated. It should concentrate on infrastructure and other conditions for the development of private initiative (for example, demining). This is the main task for the Government too. On the other hand, it is necessary to persist in explaining to the people in this post-communist society that the final results will depend on the work and commitment of every individual.

74. The Special Rapporteur welcomes the Government's programme for the return and accommodation of displaced persons, refugees and resettled persons, but urges a simplification of the procedures to be followed by Croatian Serbs residing in the FRY and Bosnia and Herzegovina who wish to return to Croatia. The Government should also ensure that people who have returned do not suffer discrimination in housing, social welfare, the supply of essential services or employment.

75. The Special Rapporteur is particularly concerned by the Government's domination of the electronic media and its attempts to stifle freedom of the press. He believes that a free media is one of the defining features of a democratic society, and is essential to the maintenance of all other freedoms.

76. The Special Rapporteur welcomes all steps taken by the Government to discover the fate of missing persons. He urges that exhumations should be conducted without regard to the nationality of the victims, and that attempts to locate the whereabouts of all persons still missing in Croatia should not be subject to ethnic bias.

77. The Government should take urgent steps to reduce the backlog of cases in the courts at all levels. It is unacceptable, especially in view of the criticism which international observers have made of proceedings in war crimes cases, that appeals against lower court decisions have been pending in the Supreme Court for over a year. The administration of justice should be transparent: information about the results of prosecutions of those charged with human rights violations in connection with Croatian military operations in 1995 should be made available. Information about court proceedings generally should be freely available, including to international organizations seeking to exercise legitimate monitoring functions.

V. Federal Republic of Yugoslavia

A. Introduction

78. The Special Rapporteur conducted a mission to the Federal Republic of Yugoslavia (FRY) from 5 to 8 April 1998, during which he visited Belgrade and Pristina. He submitted a letter on that visit (E/CN.4/1998/164) to the Chairman of the Commission on Human Rights, whose statement of 24 March 1998, requesting that the Special Rapporteur undertake a mission, had focused on concern over developments in the province of Kosovo. As of August 1998, the Special Rapporteur was preparing for an extended mission throughout the FRY, to take place in early September 1998. During that mission, he planned to further explore issues raised in the present report, including countrywide issues, such as the administration of justice and freedom of expression, and the rights of persons belonging to minority groups, particularly in Vojvodina and the Sandzak.

79. The Special Rapporteur stresses that because the required submission and publication dates for the present report fall, respectively, just before and some weeks after his extended visit to the FRY, he will take extra steps to provide the General Assembly and the Commission on Human Rights with timely analysis and information. Given the pace of developments in the FRY, particularly the crisis in Kosovo, it is likely that elements of the present report will have been superseded by events before the document is published. Therefore, in order to provide current, detailed information, the Special Rapporteur intends to submit a letter to the Commission on Human Rights after his September 1998 mission to the FRY. He takes the opportunity of the present report to submit extended observations and recommendations in which he describes ongoing concerns

and matters that require further examination. In so doing, he sends early warning of issues that may threaten the protection of human rights of persons in the FRY. Incorporated into his observations, the Special Rapporteur also notes certain developments in the situation of human rights in the FRY that hold promise for the future.

80. The present report is based on information from a variety of sources. It takes into account materials provided by the Ministry of Foreign Affairs of the FRY, including aides-mémoires and correspondence with the Special Rapporteur and OHCHR. It is based on first-hand observations, as well as on discussions in Serbia and Montenegro with government officials, community leaders, refugees and displaced persons, intergovernmental and non-governmental organizations, legal professionals, and representatives of official and independent media. The Yugoslav and Croatian Governments have provided texts deriving from their bilateral Agreement on Normalization. The Special Rapporteur regrets, however, that he has not been able to consider for the present report crucial materials from the Serbian Ministry of Internal Affairs, since that ministry has neither responded to inquiries nor provided information promised during the Special Rapporteur's discussion with the republican minister on 6 April 1998. The information requested concerns not only the increasing use of the Ministry of Internal Affairs' public grievance procedure, described by the minister himself to the Special Rapporteur, but also reports of torture and ill-treatment of specified individuals in police custody.

B. Relations with the Government

81. The Special Rapporteur and OHCHR have enjoyed the cooperation and support of the Government of the FRY in carrying out the visits that form the basis of the present report. Moreover, during the April 1998 visit of the Special Rapporteur, the Yugoslav Government proposed to regulate the status of OHCHR in the FRY. On 2 July 1998, representatives of the Government of the FRY and the United Nations signed a record of discussions, memorializing progress on an agreement, the first of its nature in any of the countries on the territory of former Yugoslavia, which will enable promotion and protection of human rights countrywide. The Special Rapporteur emphasizes the importance of finalizing the agreement at the earliest possible opportunity.

C. Observations and recommendations

1. Kosovo

82. In the four months since the Special Rapporteur's mission to the FRY, violence in the province of Kosovo has accelerated into a crisis with international consequences. Information about the crisis has been characterized by high-tech campaigns, political colouring of facts, and sensational headlines which, it can be argued, have affected events on the ground and attempts to defuse them. The Special Rapporteur is unable to assess the effect of the Kosovo crisis abroad, particularly on the situation of asylum-seekers, diaspora and refugees from Albania and the territory of former Yugoslavia in the countries where they now reside. He suggests that the effect of those communities on the crisis in Kosovo, and the effect of the crisis on them, deserve attention.

83. Many facts about the human rights situation in Kosovo remain elusive. New numbers of persons killed, wounded, abducted, arrested or alleged missing appear every day. The numbers in any category cannot be definitively confirmed, but there are concerns about high numbers of civilian casualties. Security considerations have often prevented access to areas of concern. After the "Moscow declaration" of 16 June 1998, diplomatic missions accredited in the FRY increased their presence in Kosovo. Diplomatic monitors have concentrated on patrolling conflict areas and gathering general information on the scope and nature of armed activity, but they have no single mandate and have not expressly stressed a human rights component to their monitoring. Yugoslav, Serbian and Kosovo Albanian leaders, as well as Montenegrin officials and representatives of different ethnic communities, have all pointed to abuses of the human rights of persons living in Kosovo and called upon the international community to take an active interest in the human rights of vulnerable groups. The Special Rapporteur observes that there is already common understanding on the need for exclusive attention to human rights in Kosovo. He trusts that his efforts and those of OHCHR can expand such common ground. These efforts would be served further by the FRY Government's consent to the opening of an OHCHR office in Kosovo.

84. In his letter of 8 April 1998, the Special Rapporteur focused on human rights concerns related to operations carried out by the Serbian Ministry of Internal Affairs in the Drenica region during late February and March 1998 and to the activity of armed Kosovo Albanians during that same period. Since that time, the geographical scope and intensity of armed hostilities between government forces and armed

groups of the Kosovo Liberation Army (KLA) have increased dramatically, and gross violations attributed to both sides are reported on a daily basis. The nature of the conflict has changed from isolated attacks and retaliations to a sustained armed confrontation along fluid front lines. Concerns raised in the Special Rapporteur's letter of 8 April 1998 remain unaddressed.

85. Subsequent testimonies gathered by OHCHR staff in the field suggest that in some operations, government forces have used excessive force, including deliberate destruction of property, leading to extensive civilian casualties. International and local human rights groups have reported and investigated alleged arbitrary killings by the police in the villages of Ljubenic and Poklek on 25 and 31 May 1998, and at Orahovac on 17 to 29 July 1998. Additional research will be required to determine the actual course of events in these operations. The Serbian Ministry of Internal Affairs should promptly conduct an internal investigation of the events of 28 February, 5 March and 25 and 31 May 1998 and publicly announce its findings. If sufficient evidence is found to warrant further proceedings, it should be affirmed that officers would be subject not only to internal disciplinary measures but also to investigatory procedures applicable to all citizens. Criminal charges, as warranted, should be brought by the state prosecutor and cases brought swiftly to trial, which should be held in regular, open session.

86. Since his visit to Kosovo, during which the bodies of six Kosovo Albanian men were discovered outside Prizren, the Special Rapporteur has been alarmed by reports of Serb and Albanian civilians, as well as Serbian police officers, abducted by armed Kosovo Albanians believed to be part of the KLA. OHCHR has interviewed family members of abductees and eyewitnesses to abductions. According to Yugoslav authorities, armed Kosovo Albanians abducted 100 civilians and five policemen from January through June 1998; 14 of these were killed, six escaped, 26 were released and others are still unaccounted for. Among the unaccounted for are eight Serb civilians, aged 55 to 69, who were abducted near Decani in late April 1998. Also unaccounted for are two of four persons who were abducted from a bus on 26 June 1998; two were released through efforts of ICRC. Since June 1998, the number of abducted persons has increased. Between 17 and 21 July 1998, during clashes between government forces and the KLA in and around Orahovac, 51 Serb, Kosovo Albanian and Roma civilians, including seven Orthodox monks and a nun, were abducted by armed Kosovo Albanians in a village near Orahovac. On 22 July 1998, ICRC announced that 37 people had been released, including 27 elderly persons and eight members of religious orders. The Special Rapporteur denounces these abductions, as well as enforced disappearances attributed to state security forces, as grave violations of basic principles of international human rights and humanitarian law.

87. The Special Rapporteur has received many reports of torture during pre-trial detention in Kosovo. OHCHR has written to the Serbian Ministry of Internal Affairs concerning allegations of torture including, on 31 July 1998, a request for information concerning the death in police custody on 22 July 1998 of Rexhep Bislimi, who was arrested in Urosevac on 6 July 1998. The Special Rapporteur has expressed concern, as noted above, at the ministry's lack of response to inquiries.

2. Arrest and detention standards

88. The Special Rapporteur is alarmed at consistent disregard by Serbian state security forces throughout the Republic of international standards, as well as domestic law and procedures, governing police conduct and the treatment of pre-trial detainees. Persons are arbitrarily detained by the police for questioning for periods ranging from hours to several days, and it is common practice to hold persons in pre-trial detention longer than the period mandated by law. Lawyers report that they experience serious difficulties in gaining access to their clients. When access is granted, lawyers are as a general rule not allowed to consult their clients in private. In practice, pre-trial detainees in police (investigative) and court (post-arraignment) custody are denied access to their own physicians, and allowed access only to official physicians provided by the police or court. Beatings and ill-treatment in pre-trial detention are routine throughout Serbia. Official physicians do not report injuries sustained by detainees during police interrogations, even when those injuries are obvious, and do not provide adequate medical treatment.

89. The Special Rapporteur notes the case of attorney Destan Rukiqi, arrested in his office in Pristina on 23 July 1998, as a particular example of arbitrary process by police and judicial officials, disregard for rule of law, and violation of domestic and international standards. The same day Rukiqi was arrested, he was tried and sentenced to the maximum 60 days in prison for "disturbing public order". The Serbian Ministry of Internal Affairs brought charges against Rukiqi based on an investigative judge's claim that Rukiqi had insulted her by saying she had behaved like a policeman. Rukiqi made the remark after the judge had denied him his right as a defence attorney, guaranteed under the Law on Criminal Procedure, to unconditional review of court files relating to a client. Six days after sentencing,

Rukiqi was taken to hospital suffering from kidney injuries allegedly inflicted in the Pristina prison.

90. The Special Rapporteur is concerned at abuse of the investigative procedure of "informative talks". Under the law, summons to such talks can be issued only in the event of criminal conduct or to gather direct information on criminal activity. In June 1998, Belgrade police brought summons against pensioner Vojka Kukolj to question her about the actions of a Belgrade municipal court that brought a verdict in her favour, which police repeatedly failed or refused to implement.

3. Freedom of assembly

91. Between April and August 1998, there were over 100 separate protests of Albanians and Serbs in towns within the province of Kosovo; most of these proceeded peacefully, in the presence of police. During the same period, in parts of Serbia outside Kosovo, armaments factory workers, students, university professors, pensioners and parents of army conscripts took to the streets in several protests. Police violently dispersed several thousand students and professors who gathered in front of the Serbian Parliament on 26 May 1998 to protest the new law on universities. On 2 June 1998, in downtown Belgrade, police beat a group of students who tried to demonstrate outside the Serbian government building. The Special Rapporteur notes that in recent months, police have been more likely to react violently to small student demonstrations at Belgrade than to mass demonstrations in Pristina.

4. Refugees and displaced persons

92. Since the Special Rapporteur's mission, the latest refugees to the FRY have concentrated in Vojvodina and around Belgrade. They join the conservatively estimated 500,000 refugees from Croatia and Bosnia and Herzegovina already in the FRY. The number may well be higher, increased by the silent, steady flow of Serb refugees from Croatia during the past two years. Most refugees have found shelter in larger towns with relatives or friends; others are sheltered in collective centres throughout the country, including in Kosovo. Many have not been registered with authorities or have registered only those individual family members, usually children or the elderly, whom they deem to be in the most extreme need. Many have not applied to domestic or international humanitarian organizations, which have admitted to the Special Rapporteur and OHCHR that their stores are exhausted and their donors fatigued. An estimated additional 200,000 persons have been internally displaced by the crisis in Kosovo. The Special Rapporteur warns that the task of supporting over 700,000 persons in need, a significant portion of whom cannot return to their homes destroyed in fighting, cannot be sustained by the already overtaxed aid structure in the FRY, and is a far-reaching regional catastrophe in the making.

93. The Special Rapporteur has learned of some instances in which refugees in the FRY received mobilization notices. When the individuals brought their refugee status to the attention of the conscripting offices, the mobilizations were withdrawn. Government officials have given public assurances of the FRY's binding commitments that refugees are exempt from mobilization. To allay concerns that it has been incumbent on those mobilized to evidence their status as refugees, the Special Rapporteur urges the Yugoslav government to reiterate its public assurances, and through its republic commissioners for refugees, to disseminate information specifically addressing refugees' exemption from mobilization.

94. Concerning persons of declared or attributed Serb ethnicity, the Special Rapporteur notes that political documents, agreements with intergovernmental organizations, and administrative programmes issued in Croatia on citizenship documentation procedures and return have directly or indirectly focused on the situation of displaced persons inside Croatia. Insufficient attention has been paid to the return of non-Croat refugees, specifically of refugees from Croatia now living in the FRY. The Special Rapporteur welcomes the April 1998 bilateral protocol to the Agreement on Normalization between Croatia and the FRY, which begins to address the complexities of refugee return. He joins the international and domestic human rights advocates who have praised the bilateral Agreement on Legal Assistance in Civil and Criminal Matters. He notes, however, that after issuance of the "Procedures and Instructions for Repatriation to Croatia" in April 1998, the Croatian embassy at Belgrade started to require that Croatian citizens living in FRY support their applications for return by submitting a letter of guarantee from a relative or supporter that the applicant's property was available for immediate occupancy or that he or she would be provided for in Croatia. The Procedures, which guide the work of the embassy in Belgrade, do not, however, call for letters of guarantee. The Special Rapporteur also notes that by requiring that persons travel to their municipality to apply for return of property, the Croatian political document issued in June 1998, entitled "Programme for the return and accommodation of displaced persons, refugees and resettled persons", effectively forecloses the participation of persons outside Croatia without travel documents.

95. The Special Rapporteur raises issues related to Croatian government practices in this section because many thousands of persons wishing to return or travel to Croatia live in the FRY. Monitored every day by OHCHR staff, hundreds of persons begin before dawn to queue in front of the Croatian embassy at Belgrade, seeking travel documents, return applications, citizenship documents and the registry documents required to prove citizenship eligibility. Many come from "split" families, in which some members have obtained Croatian citizenship documents, but others – one child, a parent – have been denied or after many months have received no answer to applications or appeals. Citizens of Croatia residing in FRY, "split" families and refugees who have yet to obtain their Croatian citizenship documents express the desire to visit relatives, arrange property transactions, check on the state of their holdings or simply to travel to their home country. Appointments with consular officials requested in June 1998 were being scheduled for December 1998. As part of the normalization process, the Yugoslav and Croatian Governments agreed months ago to open two additional consulates in each country. As of August 1998, the Croatian Government had only one consular office in the FRY. The Special Rapporteur stresses that the return of refugees and the acquisition of citizenship documents are served by Governments opening consulates and offices, inside and outside their borders, where persons can apply for and receive all relevant documents. In all the countries of his mandate, he has observed a great need for such offices.

D. Concluding remarks

96. The Special Rapporteur observes that challenges facing the FRY are similar to those faced by the other countries of his mandate: to build a system based on rule of law instead of on a ruling party; foster an independent judiciary; implement in daily practice international standards and constitutional protections; create functional units of self-government and local administration; promote democracy and pluralism; support freedom of broadcast and print media; transform economic and social systems so as concurrently to create opportunity and protect the vulnerable; and heal the wounds of war. As of August 1998, the FRY faces additional challenges, and the situation of human rights in the country is grave. Without addressing here the causes of the current crisis in Kosovo – to which a political solution must be found – the Special Rapporteur emphasizes that threats to life and security of the person are the most serious violations of human rights. Every loss of life is a tragedy, regardless of the profession, ethnic identification or other categorization of the victim. Every act of violence ultimately affects a society's ability to cope with the challenges described above.

VI. Final observations

97. In all the countries of the Special Rapporteur's mandate, the human rights situation remains deeply affected by the failure to observe and implement basic democratic principles. As a result, positive developments in legislation and policies are blocked by a lack of cooperation on the State and local levels. In the prevailing atmosphere of suspicion and even hatred, some local authorities and ethnically based organizations take new laws and decisions as instruments imposed on their Governments by the international community against their interests. There is sometimes encouragement, at least on a private level, to ignore reforms even by some high-ranking politicians. For example, while the programme for the return and accommodation of displaced persons, refugees and resettled persons in Croatia was a step forward, it required great efforts for it to be accepted by the Parliament even as only a resolution, not a law. In Bosnia and Herzegovina, the recommendations and decisions of the national commission on human rights and the Federation Ombudsmen are often dismissed or ignored by politicians. Such an approach also applies to legal regulation of property and socially owned apartments, where courts are slow to issue decisions, and when they do, local administrators and police fail to implement them.

98. Independence of the judiciary and police is not respected and mostly not understood. Governments and political parties should not only respect the independence of the courts and the police but also refuse their requests for political approval of their decisions. In the current situation, courts often issue discriminatory decisions because of judges' political or ethnic prejudices. It is thus essential for State institutions to insist that they respect only the law. As for the police, international police monitoring and training in Bosnia and Herzegovina and Croatia have been helpful, but much progress in professionalizing the police still needs to be made.

99. Some new laws worsen the situation. For example, the new law on the universities in the Federal Republic of Yugoslavia greatly reduces academic independence, giving Government officials control over the appointments of professors, deans and university governing boards. In Croatia, the new penal code permits the prosecution of journalists and others who insult the President, Prime

Minister and other top officials. Even if journalists prove the veracity of their reporting, they can nevertheless be convicted for inflicting "emotional anguish".

100. Freedom of the media is officially guaranteed. This is a good basis for the gradual development of an independent press. However, the situation is not as good as it could be. Electronic media, mainly television – the most influential source of information for the majority of the population – in all three countries is controlled by the Governments or ruling ethnic political parties. Some media are independent, but their editors are promoters of ethnic hatred. There are professional and non-partisan private televisions and radio stations, but they are limited by legal or quasi-legal obstructions and lack of resources. There are courageous newspapers, harassed in the same way. Under this pressure, many editors and reporters apply self-censorship so as not to face constant difficulties.

101. On the practical level, the basic problem in the region is the return of hundreds of thousands of people belonging to ethnic groups which are or have become minorities in places of their origin. Where they used to be majorities, new local authorities of different ethnic groups do everything possible to prevent the re-establishment of the previous situation. Even if security has improved and violence diminished, the overall lack of security still prevents many people from going home. The lack of available housing is due to disrespect for property rights, occupancy of houses and apartments by refugees from other parts of the region, burning of houses belonging to different ethnic groups, the inactivity of local administrations, open opposition that prevents solutions, and other reasons. Minorities are especially prevented from returning to the centres of the cities.

102. The destruction of the economy and consequent lack of employment – up to 80 per cent in certain regions – prevents even majority returns, for example of Croats to Eastern and Western Slavonia in Croatia. There are cases in which members of minority groups are not employed even though there are available jobs. Land mines often prevent farming in some of the most fertile European regions alongside the Danube and Sava rivers.

103. A special problem is the lack of respect for the religious rights of others. In Bosnia and Herzegovina, authorities at Banja Luka persist in refusing the reconstruction of the historic Ferhadija mosque that was destroyed together with all mosques in the city and the territory. A similar approach can be witnessed in regions and municipalities controlled by Croat or Bosniak extreme nationalists. In July 1998, a large Orthodox cross was destroyed by an explosion during celebrations of a Croatian football victory at Beli Monastir, Croatia.

104. The tremendous hatred felt towards other ethnic groups in all three countries has to be challenged, and methods for the promotion of tolerance and reconciliation must be developed as a precondition of sustainable peace and democratic development. Education should be the basis of such an approach. Children are currently taught different histories, especially of the last decade, on ethnic grounds. One's own community is always the victim and the others' communities the aggressors. This only extends hatred to new generations. A new curriculum should be elaborated that accepts differing views in a positive way as a basis for democratic discussion and mutual understanding.

105. It is true that some important progress has been made since the signing of the Dayton Agreement in December 1995 and the Basic Agreement in Croatia, signed in November of the same year. The Special Rapporteur will seek to highlight these positive developments in his reports and statements. Nevertheless, there still remains a high level of disregard for human rights, ranging from such core rights as the right to life to respect for basic democratic principles. The role of the international community will continue to be essential in assisting the Governments in the region in improving their human rights records, and for the people to be assured that past atrocities will not be repeated. The wounds still fresh from the wars in Bosnia and Herzegovina and Croatia, and the recent eruption of conflict in Kosovo in the Federal Republic of Yugoslavia, are clear indications that there is good reason to be concerned about deterioration in the human rights situations in all three countries.